IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 941 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MAIYUDDIN @ RAJU NOORMIYA SHEIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 941 of 2000

MR MM TIRMIZI for Petitioner

MR HL JANI, Learned APP for Respondents.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/07/2001

ORAL JUDGEMENT

1. Heard Mr.M.M.Tirmizi, learned advocate for the petitioner and Mr.H.L.Jani, learned APP for the respondents.

2. In the present petition, the petitioner has challenged the externment order dated 30/10/1999 passed by the Deputy Police Commissioner, Crime Branch, Ahmedabad City under Section 56(a) of the Bombay Police Act (hereinafter be referred to as "the Act") and the order dated 16/2/2000 passed by the Appellate Authority under Article 226 of the Constitution of India. The show cause notice was issued by the Assistant Police Commissioner, "E" Division, Ahmedabad City on 30/4/1999 and the same was served to the petitioner, which has been replied by the petitioner and the petitioner has also submitted his written arguments as well as further arguments in support of the reply prior to the order of externment passed against the present petitioner. The respondents have filed affidavit-in-reply which has been taken on record.

3. Mr.M.M.Tirmizi learned advocate appearing on behalf of the petitioner has challenged the externment order on various grounds. But according to him one or two contentions are enough to vitiate the order of externment. The contention which has been raised by Mr.M.M.Tirmizi, learned advocate for the petitioner in ground - (C) of the petition to the effect that the evidence of the uncrossed witnesses has not been considered and no reference or explanation for not considering these evidence is mentioned in the order and, therefore, the order of externment is not a speaking order and the same is required to be quashed and set aside. The learned advocate for the petitioner has also submitted that the respondent No.2 has not given any reason for ordering the externment of the petitioner from adjoining districts and has not given any reasons in support of externment order for externing the petitioner as well as why the petitioner has been externed from as many as five districts. The third contention which has been raised by Mr.Tirmizi, learned advocate for the petitioner is to the effect that the petitioner has been acquitted in Criminal Case No.892 of 1999 by the Metropolitan Magistrate, Ahmedabad. The order of acquittal was passed before the order of externment. Despite this, the respondents have materially erred in considering the two offences of the Year-1999, although the petitioner was acquitted in one offence. Therefore, there is non-application of mind on the part of the respondents. Mr.M.M.Tirmizi, learned advocate for the

petitioner has relied upon the decision of this Court in the case of Balvantsingh @ Nanio Kalyansingh Rajput v/s. Deputy Commissioner of Police, Vadodara & Another, reported in 1999 (1) G.L.H. 207. The learned advocate for the petitioner has also relied upon para-(6) of the aforesaid judgment.

4. Mr.H.L.Jani, learned APP appearing on behalf of the respondents has submitted that the respondent No.2 herein has filed detailed affidavit-in-reply along with the details of inquiry, which was conducted against the present petitioner and the Rojkam has been placed on record showing the details from which date to what date, the matter has been adjourned for examination of complainant as well as witnesses in inquiry held against the petitioner. The authorization letter is also placed on record that the Assistant Police Commissioner, "E" Division, Ahmedabad City is entitled to hold the inquiry under Section 59(1) of the Act. The learned APP for the respondents has also relied upon para Nos.(7), (8) and (9) of the reply and pointed out that the concerned authority has given detailed reply in respect to the grounds (C), (D), and (E) which have been raised by the petitioner in the petition. In short, the submission of Mr.Jani is that the Externing Authority found that the witnesses examined were interested parties residing in the neighbourhood and having close acquaintance with them and, therefore, he agreed with the report of the A.C.P. that the witnesses are not believable on the aforesaid premises. The learned APP has also submitted that there was a likelihood of the petitioner coming back from the adjoining districts and continue his activity in these days of speedy transport. Therefore, externee was externed from the adjoining districts also, as mentioned in the externment order. He has also submitted that there was no non-application of mind of the concerned authority while passing the exterment order and, therefore, the externment order is legal and valid. He has also submitted that the facts and circumstances and the material on record, justified the externment order and in such circumstances, the interference by this Court is not necessary.

5. I have considered the submissions of both the learned advocates. Looking to the show cause notice issued by the concerned Authority on 30/4/1999, it is clear that the detailed allegations have been mentioned against the present petitioner in respect to the offence registered against the petitioner. But in the show cause notice, there was no reference to the fact that whether any statements of secret witnesses have been recorded by

the concerned Authority or not and no such statements have been disclosed by the concerned authority in the show cause notice. The proceedings were initiated against the present petitioner under Section 56(a) of the Act and in response to the show cause notice, the petitioner has submitted a detailed reply on 15/7/1999 and, thereafter, he has also submitted additional reply on 12/8/1999 before the concerned authority. The copies of both the replies are placed on record at page-33 to 45. In light of these facts, in the externment order, which has been passed against the present petitioner on 30/10/1999, the concerned authority has not given any reasons in support of his conclusion. The concerned authority simply says that after considering the material on record and carefully examining the same, it is clear that the petitioner is a dangerous person and using force and acts in violative nature and, therefore, the order of externment has been passed. There was no discussion in the externment order about the evidence which was led in the inquiry, which was conducted by the Assistant Police Commissioner, Ahmedabad. There is also no discussion about any evidence. Not only that but even no reference to the reply and additional reply, which have been submitted by the petitioner to the concerned authority has been made. The show cause notice has been issued by the Assistant Police Commissioner, Ahmedabad and the order of exetrnment has been passed by the Dy. Police Commissioner, Ahmedabad. In externment order, the concerned authority has considered the statement of the secret witnesses and the appellate authority has also considered the statement of the secret witnesses, but no such statements have been disclosed to the petitioner and no copy of such statement has been supplied to the petitioner along with the show cause notice. No reference has been made in the show cause notice, that statement of the secret witnesses have been obtained by the concerned authority against the present petitioner. In light of these undisputed facts which are on record, when the order of externment has been passed by the concerned authority without discussion about the evidence on record and without any reason in support of his conclusion, it is unreasoned order and non-speaking order passed by the concerned authority. Therefore, in the light of these facts, the view which has been taken by this Court in the above referred case of Balvantsingh @ Nanio Kalyansingh Rajput v/s. Deputy Commissioner of Police, Vadodara & Another, reported in 1999 (1) G.L.H. 207 is relevant and the relevant Para-(6) is quoted as under:-

"6. The order is also not a speaking order.

An order cannot be said to be speaking order simply because it runs in six pages. The conclusion of the Externing Authority is to the following effect :

"Heard the submissions made by you and your Advocate. After carefully examining evidences produced for prosecution and defence at the end of discussion I am satisfied that there are sufficient evidences to believe that if your externment will not be made then you will continue your criminal anti-social activities. Therefore, there are sufficient and reasonable grounds for your externment."

From this it is clear that only subjective satisfaction was arrived at by the Externing Authority and not that there was slight discussion of evidence adduced by the petitioner and no ground for its rejection was given by the Externing Authority. The Appellate Authority simply observed that is seems that due to good relation with appellante they (which means witnesses) came to give evidence and it seems that they are suppressing material facts. This is also nothing but subjective satisfaction of the Appellate Authority. No reason has been given why uncross examined statements could not be believed by the Appellate Authority and on what material quasi-judicial authority made observation that the witnesses of the petitioner were suppressing material facts. In Jorubhai Aapabhai Kathi Darbar v. Sub-Divisional Magistrate, reported in 1996 (10 G.L.H. 53 this Court found that where the Externing Authority did not set out explanation given by the Externee the order of externment becomes totally non-speaking order as it does not disclose any reason or justification. Thus, for this reason also the impugned orders are rendered illegal."

6. In view of the above discussion and looking to the facts of the present case and considering the observations made by this Court, according to my opinion, the show cause notice was issued by the Assistant Police Commissioner, Ahmedabad and the order of externment has been passed by Dy. Police Commissioner, Ahmedabad. Though the Assistant Police Commissioner, Ahmedabad is authorized to proceed with the inquiry, but he is not authorized to issue the show cause notice against the petitioner. But the concerned authority is not be

entitled to issue the show cause notice because they are not competent authority under Section 56 of the Act. However, without going into that controversy, the order of externment itself is found to be unreasoned and non-speaking order, without disclosing the correct material, which has been considered against the petitioner in the show cause notice, and, therefore, the principle of natural justice is also violatied by the concerned authority. Therefore, the order of externment is required to be set aside and similarly, the order of appellate authority is also required to be set aside.

7. In the result, the present petition is allowed. The order of exetrnment dated 30/10/1999 passed by the Dy.Police Commissioner, Crime Branch, Ahmedabad and the order of the Appellate Authority dated 16/2/2000 are hereby quashed and set aside. Rule is made absolute.

(H.K.RATHOD,J.)

(vrpanchal)**